

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

VERIZON NEW ENGLAND INC. D/B/A
VERIZON MASSACHUSETTS
PERFORMANCE ASSURANCE PLAN

DTE 03-50

**RESPONSE OF AT&T OF NEW ENGLAND, INC. TO MOTION OF VERIZON
MASSACHUSETTS FOR LEAVE TO FILE A RESPONSE
TO AT&T'S OPPOSITION**

Introduction

AT&T Communications of New England, Inc., ("AT&T") herein files its response to Verizon Massachusetts's ("Verizon") September 24, 2003, *Motion for Leave to File a Response to AT&T's Opposition* ("Motion for Leave") in the above referenced proceeding.

On August 11, 2003, Verizon filed a *Motion for Confidential Treatment* requesting protection under M.G.L. c. 25, § 5D, ("Verizon Motion for Confidential Treatment") for certain information. On September 11, 2003, AT&T filed an opposition. On September 24, 2003, Verizon filed a motion for leave to file a response to AT&T's opposition. Verizon claims as its purported basis for its Motion for Leave, that AT&T "makes various claims regarding the [CMA's] filed by Verizon MA in accordance with the [PAP], as well as computer code created by Verizon MA to discern those algorithms."¹ Verizon plainly fails to explain why such rational should justify its need to file a response brief. The issues raised by AT&T in its opposition brief included bringing to the Department's attention discussions that have taken place in other

¹ *Verizon Motion for Confidential Treatment*, at 1.

jurisdictions, namely Rhode Island, New York and New Jersey, regarding the issues raised by Verizon's motion for confidential treatment.² Having failed to disclose to the Department when it filed its motion for confidential treatment that these discussions have been ongoing, and having failed to address in its motions the very issues that have been the subject of discussion and argument in other jurisdictions, Verizon now seeks, after the fact, the right to do so. Verizon should not be allowed to lie in ambush and to attack only after its opponent is not allowed to fight back. The Department should deny Verizon's request for leave to file a response to AT&T's opposition.

In accordance with AT&T's view that Verizon not be permitted to make unanswerable arguments, AT&T does not object to Verizon being permitted to file a response provided that that AT&T is permitted to respond to Verizon's argument.³ Since the point of Verizon filing a further pleading would be to add argument that it has not yet made in support of its motion for confidential treatment, AT&T should be given an opportunity to respond.

WHEREFORE, AT&T requests that the Department deny Verizon's Motion for Leave, or to the extent it allows such motion, similarly allow AT&T the opportunity to respond accordingly.

² See AT&T Opposition, at 6, 13.

³ Indeed, there may have been some miscommunication between counsel when AT&T was asked whether it would object to a Verizon request for leave to respond to AT&T's opposition. AT&T does not object provided that the Department permits AT&T to respond.

Respectfully submitted,

**AT&T COMMUNICATIONS OF
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